

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA**

Eric Dale Tessner,)	C/A No.: 9:13-cv-1626 DCN BM
)	
Petitioner,)	
)	
vs.)	<u>ORDER</u>
)	
Warden of Kirland Correctional Institution,)	
)	
Respondent.)	
_____)	

On October 14, 2014, this court issued an Order adopting the Magistrate Judge's Report and Recommendation and dismissed this action with prejudice for lack of prosecution. On October 15, 2014, judgment was entered in this case by the Clerk of Court. On October 15, 2014, petitioner filed his response in opposition to respondent's motion for summary judgment. It appears that petitioner placed them in the prison's mail on October 8, 2014, however, the response was due on October 7, 2014. Nevertheless, the court will take petitioner's response under advisement. Now therefore,

IT IS HEREWITH ORDERED that this court's Order filed on October 14, 2014, dismissing this action with prejudice for lack of prosecution, and the judgment filed on October 15, 2014 are herewith **VACATED**, and this matter is herewith reinstated for consideration of petitioner's response in opposition to respondent's motion for summary judgment.

IT IS FURTHER ORDERED that this case is **REMANDED** to the Magistrate Judge for further handling.

AND IT IS SO ORDERED.

A handwritten signature in black ink, appearing to read 'D. Norton', is written above a horizontal line.

David C. Norton
United States District Judge

October 17, 2014
Charleston, South Carolina